**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Review of the Commission's | ) | |
| Regulations Governing Television | ) | MM Docket No. 91-221 |
| Broadcasting: Television Satellite | ) | MM Docket No. 87-8 |
| Stations Review of Policy and Rules | ) | |

To: The Commission

**SUPPLEMENT TO REQUEST FOR INTERIM RELIEF**

This submission supplements the Request of Emmis Communications Corporation for Interim Relief ("Request for Interim Relief") filed May 6, 2002. In that pleading, Emmis requested that the Commission extend the time for the company to come into compliance with the Television Duopoly Rule in the Honolulu market, pending the agency's upcoming review of the rule. The sole purpose of this supplement is to advise the Commission of important information pertinent to the Request for Interim Relief which has just come to Emmis' attention, and which concerns the scope of the stay granted by the United States Court of Appeals for the District of Columbia Circuit in *Sinclair Broadcast Group, Inc. v. FCC* (No. 01-1079, decided April 2, 2002). Although that case has generally been regarded as relating only to the "voices" component of the Television Duopoly Rule, a close reading of Sinclair's motion for stay, and of the court's order granting it, discloses that the stay also appears to encompass the "top-4" provision of the Rule—the same provision that is the subject of Emmis' Request for Interim Relief. As a matter of fundamental fairness, Emmis is entitled to no less relief from the Commission than the Court has given to Sinclair.

In its Emergency Motion for Stay of an Order of the Federal Communications Commission ("Motion") filed May 22, 2001, Sinclair described the Television Duopoly Rule as follows:

> The rule adopted by the Commission at issue in this case therefore permitted common ownership of two television stations within the same Designated Market Area ("DMA") and with overlapping Grade B signal contours *only if* (a) at least eight independently owned and operating full-power television stations would remain in the DMA following the proposed combination; and (b) the two merging stations were not both among the top four-ranked stations in the market, as measured by audience share. *(This new restriction on ownership is hereinafter referred to as the "eight voices standard.")*[1]

Thus, Sinclair in its Motion used the term "eight voices standard" to include both the "voices" and "top-4" components of the rule.

By Order entered June 20, 2001, the court granted the Motion:

> FURTHER ORDERED that Sinclair's emergency motion for stay of the Federal Communications Commission's August 6, 1999, order be granted; the time for Sinclair to come into compliance with the Commission's *"eight voices standard,"* as elucidated in Report and Order, 14 FCC Rcd 12903, 12926, 12932-33 ¶¶ 47, 64 (Aug. 6, 1999), is hereby stayed pending further order of the court. Movants have met the stringent standards for a stay pending court review. See Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F .2d 841 (D.C. Cir. 1977); D.C. Circuit Handbook of Practice and Internal Procedures 32 (2000). (Italics added)

Accordingly, by its use of the phrase "eight voices standard"--Sinclair's inclusive term for both components of the Television Duopoly Rule--it appears that the court stayed compliance not only with the "voices" component of the rule, but also with the "top 4" provision. Indeed, inclusion of the "top-4" standard in the stay was absolutely essential to provide effective relief to Sinclair, inasmuch as three of the four LMA combinations at issue in the case conflict with the

[1] Motion at pp. 6-7. (Footnotes omitted; emphasis added.)

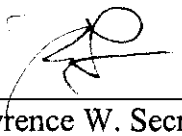
"top-4 rule."[2] Moreover, inclusion of both components of the rule in the stay was appropriate since, as Emmis showed in its Request for Interim Relief, the two are interrelated.

As noted, Emmis' Request for Interim Relief requests extension of a waiver of the "Top 4" provision of the Television Duopoly Rule. As a matter of fundamental fairness, the Court's stay of the same provision as to Sinclair compels grant of Emmis' request; in fact, Emmis requires less relief than the Court provided to Sinclair since, unlike Sinclair, Emmis requires no stay of the "voices" component of the Rule and its request covers only one market. In *UTV of San Francisco, Inc.*, 16 FCC Rcd. 14975, 14982 (2001), the Commission granted Fox a stay of compliance with the "national TV cap" because of a similar stay previously granted to CBS by the Court of Appeals. A similar result is called for in the instant case. It is a well-settled principle of Constitutional and administrative law that similarly-situated parties may not be subjected to disparate treatment without an adequate basis. *E.g.*, *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000); *Turner* Broadcasting *System, Inc., v. FCC,* 512 U.S. 622 (1994); *Petroleum Communications, Inc., v. FCC,* 22 F. 3d 1164 (D.C. Cir. 1994); *Melody Music, Inc. v. FCC*, 345 F. 2d 730 (D.C. Cir. 1965). No such basis exists here.

[2] This conflict is addressed by Sinclair in recently-filed applications for acquisition of the three stations involved: WRGT-TV, Dayton, Ohio; WVAH-TV, Charleston, West Virginia; and WTTE-TV, Columbus, Ohio. In each application, Sinclair requests waiver of the "top 4" provision of the Television Duopoly Rule, indicating that both its existing station in each market and the station sought to be acquired are "top 4" stations. In addition, in the Dayton and Columbus markets, Sinclair requires a waiver of the "voices" provision of the rule. See BALCT-20020718ABH, BALCT-20020718ABO, BTCCT-20020718ABB.

For the reasons stated herein and in the Request for Interim Relief as originally filed, the request should be granted.

Respectfully submitted,



Lawrence W. Secrest, III
John E. Fiorini, III
Wiley Rein & Fielding LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7000

September 4, 2002

## CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2002, I caused a copy of the foregoing Supplement to Request For Interim Relief to be delivered via hand-delivery to the following:

Chairman Michael K. Powell
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room #8B201
Washington, DC 20554

Commissioner Kevin J. Martin
Federal Communications Commission
The Portals
445 12th Street, SW
Room #8A-204
Washington, DC 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
The Portals
445 12th Street, SW
Room #8B-115
Washington, DC 20554

Commissioner Michael J. Copps
Federal Communications Commission
The Portals
445 12th Street SW
Room #8A-302
Washington, DC 20554

Jane E. Mago
Daniel McMullen Armstrong
Joel Marcus
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room #8-A741
Washington, DC 20554

Kenneth W. Ferree
Federal Communications Commission
The Portals
445 12th Street SW
Room #3C-740
Washington, DC 20554

Roy J. Stewart
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room #2C-347
Washington, DC 20554

Jacob M. Lewis
U.S. Department of Justice
(DOJ) Antitrust Division, Appellate
601 D Street, N.W.
Patrick Henry Building
Washington, DC 20530

Angela Julia Campbell*
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, DC 20001

John R. Feore, Jr.*
Scott D. Dailard
*Dow, Lohnes & Albertson*
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036

Donald F. Laidlaw*
Post Office Box 8969
Honolulu, HI 96830

Stirling Morita*
3054 Ala Poha Place #806
Honolulu, HI 96818

Andrew Jay Schwartzman*
Harold Jay Feld
Media Access Project
1625 K Street, N.W.
Suite 1118
Washington, DC 20006

Kathryn Rider Schmeltzer*
Barry H. Gottfried
Shaw Pittman
2300 N Street, N.W.
Washington, DC 20037-1128

Wanda L. Thorpe

*Delivery via first-class mail.